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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 314

TRANS-LUX DISTRIBUTING CORP.,
Appellants,

v.

THE BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK,
Appellees.

MOTION TO DISMISS APPEAL

CHARLES A. BRIND,
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BATAVIA TIMES, LAW PRINTERS,
BATAVIA, N. Y.

The facts are that petitioner applied to the Motion Picture Division of the State Education Department for a license to exhibit the said film in the State of New York.

The Motion Picture Division, after reviewing the film, directed the elimination of two scenes which depicted sexual intercourse. Subsequently, on request of the petitioner, the film was again reviewed by the Director of the Motion Picture Division who sustained the recommendation of the Reviewing Committee. The petitioner then appealed to the Board of Regents from the decision of the Motion Picture Division to deny a license unless the eliminations recommended were made. The Committee of the Board of Regents reviewed the film under the procedures set forth in Section 124 of the Education Law and dismissed the appeal. The appellant brought a proceeding in the State Courts to review this decision. The Appellate Division of the Supreme Court of the State of New York reversed the determination of the Board of Regents and the Court of Appeals reversed the Appellate Division and reinstated the decision of the Board of Regents.

The film depicts a love affair between a young widow and a stranger who "knocks at her door". In the course of the film, as above indicated, sexual intercourse is shown. An act of sexual intercourse is the climax of the film. For this reason, the film is obscene within the meaning of Sections 122 and 122-A of the Education Law.

Argument

The appeal herein does not present a substantial federal question.

As indicated in the stated facts above, the only issue involved is whether the State of New York violates any State or Federal Constitutional provision or other statute, in refusing to license a motion picture on the sole ground that the picture portrays two acts of sexual intercourse. In all of the cases this Court has indicated that this crass type of obscenity is legally objectionable and that there is nothing in the State or Federal Constitutions which prevent a state in refusing to license a motion picture which portrays pornography. It is to be noted that there is no question but that sexual intercourse is portrayed. The Regents and all the State Courts have indicated this to be the fact. This Court in its decisions has continuously pointed out that the depiction of any scene in a movie which appeal to "prurient interest" is not protected by the constitutional provisions. In this picture not only is sexual intercourse portrayed but the orgasm of the girl is dramatized as the climax to the picture. Hence, in summarizing the above, this Court has already construed the constitutional provisions in respect to the presentation of sexual intercourse, and this leaves no substantial federal question to be determined by the Court. The cases we have reference to are those already quite familiar to this Court, *viz.* (*Burstyn* v. *Wilson*, 343 U. S. 495; *Roth* v. *U. S.*, 354 U. S. 476; *Kingsley Pictures* v. *Regents*, 360 U. S. 684; *Times Film Corp.* v. *Chicago*, 365 U. S. 43).

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Appellee in the above entitled case moves to dismiss the appeal on the grounds that the appeal does not present a substantial federal question.

Statement of Facts

This is an appeal from a decision of the Court of Appeals of the State of New York which reversed a decision of the Appellate Division, Third Department, and reinstated the determination of the Board of Regents denying a license to the film "A Stranger Knocks" on the ground the said film is obscene in that it presents scenes of sexual intercourse.

Conclusion

For all the foregoing reasons it is respectfully urged that the appeal herein should be dismissed.

Respectfully submitted,

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